

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *RG* D.C.
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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENN. MEMPHIS

MARY ANN LAZAR,

Plaintiff,

vs.

EZPAWN TENNESSEE, INC.,

Defendant.

Civ. No. 03-2868-B/P

ORDER DENYING DEFENDANT'S MOTION TO DISQUALIFY PLAINTIFF'S
COUNSEL

Before the court is defendant's Motion to Disqualify Plaintiff's Counsel, filed July 22, 2005 (dkt #23). In the motion, defendant seeks to disqualify counsel on the basis that counsel, Thomas D. Yeaglin, will be a witness at trial. Specifically, defendant argues that as part of the plaintiff's complaint for punitive damages, she claims that Mr. Yeaglin attempted several times to contact defendant's representatives, but did not receive any return telephone calls. Defendants contend that if the plaintiff intends to present proof at trial regarding Mr. Yeaglin's efforts to contact the defendant, Mr. Yeaglin will be a trial witness and, thus, should be disqualified as trial counsel. On August 1, 2005, the plaintiff filed her response in opposition to the motion. On September 1, 2005, the court held a hearing on the

motion. Counsel for all interested parties were present and heard. At the hearing, Mr. Yeaglin stated that he will not testify as a witness at trial, and will not present any evidence to show that he tried to contact the defendant's representatives. Instead, Mr. Yeaglin intends to question defendant's representatives about whether they tried to call or make contact with plaintiff or plaintiff's counsel. Mr. Yeaglin may also attempt to admit telephone records regarding incoming calls (or the lack thereof) to his law office. Based on Mr. Yeaglin's statement that he will not present any evidence, through his testimony or otherwise, that he contacted or tried to contact defendant's representative, the motion to disqualify is DENIED.

IT IS SO ORDERED.



TU M. PHAM

United States Magistrate Judge

September 2, 2005

Date



Notice of Distribution

This notice confirms a copy of the document docketed as number 45 in case 2:03-CV-02868 was distributed by fax, mail, or direct printing on September 6, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT